

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

7 * * *

8 THE BANK OF NEW YORK MELLON FK
9 THE BANK OF NEW YORK, AS TRUSTEE
10 FOR THE CERTIFICATEHOLDERS OF
11 THE COWALT, INC. ALTERNATIVE LOAN
12 TRUST 2006-33CF, MORTGAGE PASS-
13 THROUGH CERTIFICATES, SERIES
14 2006-33CB,

15 Plaintiff,

16 v.

17 BRAEWOOD HERITAGE ASSOCIATION,
18 INC., NYLA G. CARSON, MARIAN L.
19 HAMMOND, DOE Individuals I-X, inclusive,
20 and ROE Corporations I-X, inclusive,

21 Defendants.

Case No. 2:17-cv-00336-MMD-CWH

ORDER

22 **I. SUMMARY**

23 Before the Court is Plaintiff's motion for judgment on the pleadings (ECF No. 22)
24 and motion for default judgment (ECF No. 23). The Court has reviewed Defendant
25 Braewood Heritage Association, Inc.'s ("Braewood") response. (ECF No. 27.) For the
26 reasons discussed herein, both motions are granted.

27 **II. RELEVANT BACKGROUND**

28 The following facts are taken from the Complaint. (ECF No. 1.)

On July 27, 2006, borrower Marian L. Hammond ("Borrower") financed the
purchase of property located at 3378 Clandara Avenue in Las Vegas, Nevada ("the
Property") through a loan evidenced by a note and deed of trust recorded on August 1,
2006 ("DOT"). The DOT was later assigned to Plaintiff Bank of New York Mellon.

1 The Property is located within the Braewood Heritage Association. Because
2 Borrower failed to pay Braewood HOA assessments and other fees owed, Braewood
3 ultimately foreclosed on the HOA lien on February 13, 2014. Defendant Nyla G. Carson
4 acquired the Property at the foreclosure sale.

5 Plaintiff asserts a claim for quiet title/declaratory relief, challenging the
6 constitutionality of NRS 116, the state statute governing the HOA foreclosure sale, and
7 other state law claims.

8 **III. MOTION FOR DEFAULT JUDGMENT (ECF No. 23)**

9 Plaintiff seeks default judgment against Carson on its quiet title claim, asking the
10 Court to declare Carson acquired the Property subject to the DOT. The Court finds that
11 default judgment is proper. Plaintiff has satisfied the procedural requirements for default
12 judgment pursuant to Fed. R. Civ. P. 55(b). The Clerk properly entered a default against
13 Carson pursuant to Fed. R. Civ. P. 55(a) because Carson failed to appear after having
14 been properly served on February 8, 2017. (ECF Nos. 8, 17.) Plaintiff has also satisfied
15 the factors for obtaining default judgment articulated in *Eitel v. McCool*, 782 F.2d 1470,
16 1471 (9th Cir. 1986). The Court thus grants Plaintiff's motion for default judgment (ECF
17 No. 23).

18 **IV. MOTION FOR JUDGMENT ON THE PLEADINGS (ECF No. 22)**

19 Plaintiff seeks judgment based on the Ninth Circuit Court of Appeals' decision in
20 *Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), *cert.*
21 *denied*, 137 S. Ct. 2296 (2017). (ECF No. 22.) In *Bourne Valley*, the Ninth Circuit held
22 that the opt-in notice scheme established in the 1993 version of NRS § 116.3116 *et seq.*
23 is facially unconstitutional because it requires a lender with a first position deed of trust to
24 affirmatively request notice of an HOA's intention to foreclose, which the court found to
25 be a violation of the lender's due process rights. 832 F.3d at 1156. This Court has found
26 that the most equitable remedy under the circumstances presented by an HOA
27 foreclosure sale under the pre-2015 version of NRS 116 is to declare that the senior deed
28 of trust still encumbers the HOA foreclosed property. See *U.S. Bank Nat. Ass. v. Thunder*

1 *Prop., Inc.*, 3:15-cv-00328-MMD-WGC (D.Nev. Sept. 14, 2017). Plaintiff seeks the same
2 relief here—the DOT still encumbers the Property. And Braewood does not oppose this
3 requested relief. (ECF No. 27.) Accordingly, the Court will grant Plaintiff's motion for
4 judgment on the pleadings (ECF No. 22).

5 **V. CONCLUSION**

6 It is therefore ordered that Plaintiff's motion for default judgment (ECF No. 23) and
7 motion for judgment on the pleadings (ECF No. 22) are granted. Plaintiff is directed to
8 submit a proposed order in accordance with this Order within ten (10) days. Plaintiff is
9 also directed to file either (1) a notice of voluntary dismissal of the remaining defendant
10 (Borrower) or (2) a status report to state how it intends to proceed against Borrower within
11 ten (10) days.

12 DATED THIS 6th day of February 2018.



13
14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28